

SENATE BILL NO. 325

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services

on _____)

(Patron Prior to Substitute--Senator Reeves)

A BILL to amend and reenact §§ 4.1-130, 4.1-131, 4.1-212, and 4.1-311 of the Code of Virginia and to repeal § 4.1-310 of the Code of Virginia, relating to alcoholic beverage control; transportation of alcoholic beverages.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-130, 4.1-131, 4.1-212, and 4.1-311 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-130. Importation of beverages not under customs or internal revenue bonds; storage in approved warehouses; release.

A. Notwithstanding the provisions of ~~§ 4.1-310~~ 4.1-311, alcoholic beverages not under United States customs bonds or internal revenue bonds may be transported into and stored in the Commonwealth in warehouses which have been approved by the Board for that purpose.

The Board may refuse to approve any warehouse as a place where alcoholic beverages may be stored if it has reasonable cause to believe that the owner or operator of the warehouse is a person to whom or the place sought to be approved is one for which the Board may refuse to grant a license under the provisions of § 4.1-222, which shall apply mutatis mutandis, unless the provisions of such section are inapplicable.

The Board may disapprove any warehouse which has been approved as a place where alcoholic beverages may be stored if it has reasonable cause to believe that a ground exists for which the Board may suspend or revoke a license under the provisions of § 4.1-225, which shall apply mutatis mutandis, unless the provisions of such section are inapplicable.

B. Alcoholic beverages stored in warehouses in the Commonwealth pursuant to this section shall be released only on permits issued by the Board for delivery to the Board or to persons entitled to receive them within or outside the Commonwealth.

§ 4.1-131. Importation of beverages under customs bonds and holding in warehouses; release.

A. Alcoholic beverages may be imported into the Commonwealth under United States customs bonds and be held in the Commonwealth in United States customs bonded warehouses. Alcoholic beverages may be removed from any such warehouse, wherever situated, to such a warehouse located in the Commonwealth and be held in the Commonwealth.

B. Alcoholic beverages so imported or removed to such warehouses in the Commonwealth shall be released from customs bonds in the Commonwealth only (i) for delivery to the Board, or to licensees entitled to receive them in the Commonwealth, as provided in ~~§ 4.1-310~~ 4.1-311; (ii) to boats engaged in foreign trade, trade between the Atlantic and Pacific ports of the United States, trade between the United States and any of its possessions outside of the several states and the District of Columbia, or for shipment outside of the Commonwealth; or (iii) in accordance with subsection C for the official or personal use of persons who are on duty in the United States as members of the armed forces of any foreign country, or their immediate family, authorized by federal laws and regulations to receive imported alcoholic beverages free of customs duties and internal revenue taxes.

C. Persons operating United States customs bonded warehouses and licensed as wholesalers or retailers may make sales and deliveries, in quantities determined by the Board, of alcoholic beverages held in customs bond to foreign armed forces personnel as provided in subsection B. Such sales may be made only on permits issued by the Board which shall cover the transportation of such imported alcoholic beverages, either by the operator of a customs bonded warehouse or purchaser from the operator, from such customs bonded warehouse to the place of duty or residence of such authorized persons.

§ 4.1-212. Permits required in certain instances.

A. The Board may grant the following permits which shall authorize:

1. Wine and beer salesmen representing any out-of-state wholesaler engaged in the sale of wine and beer, or either, to sell or solicit the sale of wine or beer, or both in the Commonwealth.

2. Any person having any interest in the manufacture, distribution or sale of spirits or other alcoholic beverages to solicit any mixed beverage licensee, his agent, employee or any person connected with the licensee in any capacity in his licensed business to sell or offer for sale such spirits or alcoholic beverages.

3. Any person to keep upon his premises alcoholic beverages that he is not authorized by any license to sell and which shall be used for culinary purposes only.

4. Any person to transport lawfully purchased alcoholic beverages within, into or through the Commonwealth, except that no permit shall be required for any person shipping or transporting into the Commonwealth a reasonable quantity of alcoholic beverages when such person is relocating his place of residence to the Commonwealth in accordance with ~~§ 4.1-310~~ 4.1-311.

5. Any person to keep, store, or possess any still or distilling apparatus for the purpose of distilling alcohol.

6. The release of alcoholic beverages not under United States custom bonds or internal revenue bonds stored in Board approved warehouses for delivery to the Board or to persons entitled to receive them within or outside of the Commonwealth.

7. The release of alcoholic beverages from United States customs bonded warehouses for delivery to the Board or to licensees and other persons enumerated in subsection B of § 4.1-131.

8. The release of alcoholic beverages from United States internal revenue bonded warehouses for delivery in accordance with subsection C of § 4.1-132.

9. A secured party or any trustee, curator, committee, conservator, receiver or other fiduciary appointed or qualified in any court proceeding, to continue to operate under the licenses previously issued to any deceased or other person licensed to sell alcoholic beverages for such period as the Board deems appropriate.

10. The one-time sale of lawfully acquired alcoholic beverages belonging to any person, or which may be a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien

or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, by a sheriff, personal representative, receiver or other officer acting under authority of a court having jurisdiction in the Commonwealth, or by any secured party as defined in subdivision (a)(73) of § 8.9A-102 of the Virginia Uniform Commercial Code. Such sales shall be made only to persons who are licensed or hold a permit to sell alcoholic beverages in the Commonwealth or to persons outside the Commonwealth for resale outside the Commonwealth and upon such conditions or restrictions as the Board may prescribe.

11. Any person who purchases at a foreclosure, secured creditor's or judicial auction sale the premises or property of a person licensed by the Board and who has become lawfully entitled to the possession of the licensed premises to continue to operate the establishment to the same extent as a person holding such licenses for a period not to exceed 60 days or for such longer period as determined by the Board. Such permit shall be temporary and shall confer the privileges of any licenses held by the previous owner to the extent determined by the Board. Such temporary permit may be issued in advance, conditioned on the above requirements.

12. The storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond in warehouses located in the Commonwealth.

13. The storage of wine by a licensed winery or farm winery under internal revenue bond in warehouses located in the Commonwealth.

14. Any person to conduct tastings in accordance with § 4.1-201.1, provided that such person has filed an application for a permit in which the applicant represents (i) that he or she is under contract to conduct such tastings on behalf of the alcoholic beverage manufacturer or wholesaler named in the application; (ii) that such contract grants to the applicant the authority to act as the authorized representative of such manufacturer or wholesaler; and (iii) that such contract contains an acknowledgment that the manufacturer or wholesaler named in the application may be held liable for any violation of § 4.1-201.1 by its authorized representative. A permit issued pursuant to this subdivision shall be valid for at least one year, unless sooner suspended or revoked by the Board in accordance with § 4.1-229.

15. Any person who, through contract, lease, concession, license, management or similar agreement (hereinafter referred to as the contract), becomes lawfully entitled to the use and control of the premises of a person licensed by the Board to continue to operate the establishment to the same extent as a person holding such licenses, provided such person has made application to the Board for a license at the same premises. The permit shall (i) confer the privileges of any licenses held by the previous owner to the extent determined by the Board and (ii) be valid for a period of 120 days or for such longer period as may be necessary as determined by the Board pending the completion of the processing of the permittee's license application. No permit shall be issued without the written consent of the previous licensee. No permit shall be issued under the provisions of this subdivision if the previous licensee owes any state or local taxes, or has any pending charges for violation of this title or any Board regulation, unless the permittee agrees to assume the liability of the previous licensee for the taxes or any penalty for the pending charges. An application for a permit may be filed prior to the effective date of the contract, in which case the permit when issued shall become effective on the effective date of the contract. Upon the effective date of the permit, (a) the permittee shall be responsible for compliance with the provisions of this title and any Board regulation and (b) the previous licensee shall not be held liable for any violation of this title or any Board regulation committed by, or any errors or omissions of, the permittee.

16. Any sight-seeing carrier or contract passenger carrier as defined in § 46.2-2000 transporting individuals for compensation to a winery, brewery, or restaurant, licensed under this chapter and authorized to conduct tastings, to collect the licensee's tasting fees from tour participants for the sole purpose of remitting such fees to the licensee.

17. Any tour company guiding individuals for compensation on a walking tour to one or more establishments licensed to sell alcoholic beverages at retail for on-premises consumption to collect as one fee from tour participants (i) the licensee's fee for the alcoholic beverages served as part of the tour, (ii) a fee for any food offered as part of the tour, and (iii) a fee for the walking tour service. The tour company shall remit to the licensee any fee collected for the alcoholic beverages and any food served as part of the tour. The tour company shall ensure that (a) each tour includes no more than 15 participants per tour guide

and no more than three tour guides, (b) a tour guide is present with the participants throughout the duration of the tour, and (c) all participants are persons to whom alcoholic beverages may be lawfully sold.

B. Nothing in subdivision 9, 10, or 11 shall authorize any brewery, winery or affiliate or a subsidiary thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale licensee in the event of a default, except to the extent authorized by subdivision B 3 a of § 4.1-216.

§ 4.1-311. Limitations on transporting lawfully purchased alcoholic beverages; penalty.

~~A. The~~ Except as otherwise permitted under subsection F of § 4.1-206.3 or § 4.1-209.1 or 4.1-212.1, the transportation of alcoholic beverages lawfully purchased in the Commonwealth in excess of the following limits is prohibited except in accordance with Board regulations and the following provisions:

1. ~~Wine and beer, no limitation may be~~ (i) if lawfully purchased in the Commonwealth for personal use and not for resale, transported within the Commonwealth in the personal possession of the purchaser; (ii) if lawfully purchased outside the Commonwealth for personal use and not for resale, transported into or within the Commonwealth in the personal possession of the purchaser in an amount not to exceed three gallons; or (iii) transported into the Commonwealth if consigned to a wholesale wine licensee.

2. Beer may be (i) if lawfully purchased in the Commonwealth for personal use and not for resale, transported within the Commonwealth in the personal possession of the purchaser; (ii) if lawfully purchased outside the Commonwealth for personal use and not for resale, transported into or within the Commonwealth in the personal possession of the purchaser in an amount not to exceed three gallons; or (iii) transported into the Commonwealth if consigned to a wholesale beer licensee.

3. ~~Alcoholic beverages other than wine and beer, may be~~ (i) if lawfully purchased for personal use and not for resale, transported into or within the Commonwealth in the personal possession of the purchaser in an amount not to exceed three gallons, provided that not more than one gallon thereof shall be in containers holding less than one-fifth of a gallon. If any part of the alcoholic beverages being transported is held in metric-sized containers, the three-gallon limitation shall be construed to be 12 liters, and not more than 4 liters thereof shall be in containers smaller than 750 milliliters or (ii) transported into the Commonwealth if such alcoholic beverages (a) are consigned to the Board, (b) are being transported

to a distillery or winery licensee, or (c) are ordered by the Board and are being transported directly to persons for industrial purposes, persons for the manufacture of articles allowed to be manufactured under § 4.1-200, or hospitals pursuant to a permit issued by the Board for which the Board may charge a reasonable fee.

~~B. The transportation of alcoholic beverages lawfully purchased outside the Commonwealth, within, into or through the Commonwealth, in quantities in excess of one gallon or four liters if any part of the alcohol being transported is held in metric sized containers, is prohibited except in accordance with Board regulations adopted pursuant to this section.~~ provisions of this section shall not be construed to prohibit (i) any person from bringing, through U.S. Customs in his accompanying baggage, into the Commonwealth for personal use and not for resale alcoholic beverages in an amount not to exceed three gallons; (ii) the transportation into the Commonwealth of a reasonable quantity of alcoholic beverages for personal use and not for resale in the personal or household effects of a person relocating his place of residence to the Commonwealth; or (iii) the transportation of alcoholic beverages on passenger boats, dining cars, buffet cars, or club cars licensed under this title or by common carriers engaged in interstate or foreign commerce.

C. Any person transporting alcoholic beverages in violation of this section ~~shall be~~ is guilty of a Class 1 misdemeanor.

2. That § 4.1-310 of the Code of Virginia is repealed.

3. That the Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board) shall promulgate regulations to implement the provisions of this act. The Board's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall provide an opportunity for public comment on such regulations prior to adoption.

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